IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE NINETEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO : 27642 of 1998

Between:

Dr. CRK Sarma, S/o Venkata Narasimha,
R/o Machilipatnam, Krishna Dist.

..... PETITIONER

AND

1 The Commissioner of Technical Education,
Government of A.P., BRKR Buildings,
Tankbund Road, Hyderabad-500 063.
2 Sri A.Prabhakara Rao,
SVH College of Engineering, Machilipatnam-521 002
3 The Chairman,
SVH College of Engineering, Machilipatnam-521 002
4 The Chairman,
All India Council for Technical Education, New Delhi.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction more particularly one in the nature of Writ of Mandamus, call for the records and set aside the impugned Proceedings No..Nil, dated 8-8-98 of the 2nd respondent college as being arbitrary, improper, unconstitutional, unjust and violative of conditions of service and principles of natural justice and consequential directing the respondents to continue the petitioner in service of the college upto the age of Superannuation of 60 yrs without any break with all consequential benefits.

Counsel for the Petitioner: Mr. P.R.PRASAD

Counsel for Respondent No.1: GP FOR HIGHER EDUCATION

Counsel for Respondent No.2: None appeared

Counsel for Respondent No.3 : Mr. A.Veera Swamy

Counsel for Respondent No.4 : Mr. M.V.Suresh Kumar

The Court made the following :

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.27642 of 1998

ORDER :

The only question that arises for consideration in this Writ Petition is whether the age of superannuation of a Teacher in the Unaided Private Engineering College is 58 years or 60 years ?

Admittedly, petitioner worked as Professor of Civil Engineering in the S.V.H. College of Engineering, Machilipatnam. Through the impugned Proceedings dated 8-8-1998 of the respondent-College, the petitioner was sought to be retired from service with effect from 30-6-1998 on attaining the age of 58 years.

According to the petitioner, the age of superannuation for Teachers in technical institutions shall be 60 years. This aspect was examined by the competent authority, viz., Commissioner of Technical Education, 1st respondent herein, and issued Circular Memo No.E4/17983/98, dated 27-6-1998, wherein it is categorically stated that as per All India Council for Technical Education (AICTE) and University Rules, an employee of the University, excepting administrative and ministerial employees, shall be retired on attaining age of 60 years. This was addressed to the Secretaries and Correspondents of all private unaided engineering colleges in the State of Andhra Pradesh. Further, as per G.O.Ms.No.242, Education (EC.I) Department,

dated 18-7-1989, the age of superannuation of teachers working in private unaided engineering colleges would be as per the Regulations of the University concerned. The age of superannuation for all the teachers in the Universities, excepting administrative and ministerial staff, as per UGC guidelines was directed to be adopted by the Private Engineering Colleges in the State to avoid any legal problems. The said Circular dated 27-6-1998 is still in force and the same is binding on the respondent-College. Therefore, retiring the petitioner at the age of 58 years with effect from afternoon of 30-6-1998 is arbitrary and illegal.

The respondent-College was approved by the AICTE, which is a statutory authority under All India Council for Technical Education Act,1987 for granting approval in case of technical institutions, such as, the respondent-college. Government of India in Proceedings No.R.6-1/88-T.5, dated 28-2-1989 decided to implement revision of pay scales of engineering colleges and other technical institutions. As per Clause 21 of the appendix to the said proceedings, the age of superannuation was fixed at 60 years with a provision for re-employment upto 65 years. The respondent-college is bound by the said proceedings of Ministry of Human Resources Development, Department of Education, Government of India, dated 28-2-1989. Therefore, the petitioner is entitled to be continued in service till he attained the age of superannuation i.e. 60 years, viz., till 30-6-2000.

A detailed counter affidavit and additional counter affidavit have been filed by the respondent-College denying the allegations made by the petitioner. It is stated that since the respondent-College is not receiving any aid either from the State Government or Central Government, the instructions issued by the AICTE with regard to superannuation etc., are only recommendatory in nature and are not applicable to the teachers working in the respondent-College. Further, it is asserted that the continuation of teachers in R.V.R. & J.C. College of Engineering, Guntur etc., upto the age of 60 years is purely the discretion of the management of that particular College. There is no legal obligation on the respondent-College to follow the same.

Heard both sides.

At the outset, it may be noticed that the learned Government Pleader representing the 1st respondent, though not filed any counter, submitted on instructions that the respondent-College is bound by the guidelines/instructions issued by the AICTE

and AICTE has prescribed rules fixing the age of superannuation of teachers in private unaided educational institutions as 60 years.

Admittedly, the respondent-College has no service conditions governing its teaching and non-teaching staff. It is not denied that the AICTE has not fixed the age of superannuation of teaching staff at 60 years. It is also not denied that the 1st respondent issued the Circular dated 27-6-1998 wherein it is stated that as per the AICTE and the University Rules, an employee of the University, excepting administrative and ministerial employees, shall be retired on superannuation when he attained the age of 60 years and as per G.O.Ms.No.242, Education (B.C.I) Department, dated 18-7-1989, the age of superannuation will be as per the guidelines of the University concerned. It is further mentioned that the age of superannuation is 60 years for all the employees in the Universities, excepting administrative and ministerial employees, as per the UGC guidelines and conditions imposed while extending pay scales to engineering colleges in the State and, therefore, the Secretaries and Correspondents of all the private engineering colleges in the State are requested to adhere to the above rule position and avoid unnecessary legal problems. The conditions of service appended to G.O.Ms.No.242, dated 18-7-1989 at para-10 says that the age of superannuation of teaching staff of the Engineering Colleges will be as per the regulations of the University concerned. Clause 21 of the appendix appended to the instructions issued by the Ministry of Human Resources (Department of Education), Government of India, New Delhi dated 28-2-1989 reads as under:

> "**SUPERANNUATION AND RE-EMPLOYMENT:**
>
> The age of superannuation of all teachers in technical institutions shall be 60 years with a provision for re-employment upto 65 years in deserving cases."

G.O.Ms.No.242, dated 18-7-1989 speaks out application of revised pay scales, the requirement of qualifications and experience thereto and the appendix appended to Circular dated 28-2-1989 also speaks regarding the scheme of revision of pay scales of Teachers, Librarians and Physical Education Instructors in Engineering Colleges and other degree level technical institutions including Architectural, Management, Town Planning, Pharmacy etc., falling under the purview of AICTE. Admittedly, the respondent-college is falling within the purview of AICTE. The respondent-college relied upon G.O.Ms.No.36, dated 9-11-1985 wherein it is stated

that the Government had decided the age of superannuation of teaching staff working in private/aided colleges to be enhanced from 55 to 58 years on par with Government employees as ordered in the A.P. Public Employment (Regulation of Age of Superannuation) Second Amendment Ordinance,1984.

In a similar matter, this Court in W.P.No.3637 of 1999, dated 6-1-2003 held as under:

> "Second respondent college has its own service conditions. As per clause-5 of the service conditions employees shall continue to hold their office till they attain age of 60 years in the case of teaching staff, and 58 years in the case of non-teaching staff. Further, first respondent, Commissioner of Technical Education issued a Circular bearing Memo No.E4/17783/98, dated 27-6-1998 to the effect that as per All India Council for Technical Education (AICTE) and University Rules teaching staff in Engineering Colleges shall be retired at the age of 60 years and that the Secretaries and the Correspondents of Engineering Colleges in the State were requested to adhere to the above rule position. Further, the Ministry of Human Resources Development, Department of Education vide their letter No.F.6-1/88 T.5, dt.28.2.1989 communicated the scheme of revision of pay scales of Teachers, Librarians and Physical Education Instructors in Engineering Colleges and other degree level technical institutions. As per para 21 of the scheme, age of superannuation of all teachers in technical institutions shall be 60 years. Placing on these documents, it is contended that the action of the second respondent in retiring the petitioner with effect from 31.8.1998 is illegal and wrongful.
>
> It is not denied before me that the second respondent College though it is unaided is bound by the guidelines/instructions issued by AICTE. It is also not denied that AICTE has prescribed the Rules fixing age of superannuation of teachers in private unaided educational institutions at 60 years. Therefore, the communication dt.31.8.1998 issued by the third respondent to the petitioner relieving him from duties with effect from 31.8.1998 allegedly on attaining the age of superannuation is ex facie illegal and cannot be sustained. As the petitioner was not admittedly retired as on the date and he did not work, in these proceedings the question of directing respondents 2 and 3 to pay salary for the period during which he was denied employment cannot be decided. It is however open to the petitioner to approach the Civil Court and seek appropriate remedy for damages including salary for the period of 24 months."

It is also not denied that the University Regulations are not applicable to the respondent-College. The University Regulations insofar as superannuation of age of the teachers *mutatis mutandis* are also applicable to the teachers working in private unaided engineering/technical college, which are under purview of AICTE. Therefore, a conjoint reading of Circular dated 27-6-1998, G.O.Ms.No.242, dated 18-7-1989 and G.O.Ms.No.208, dated 29-6-1999 makes the position clear that the teachers working in the private unaided engineering and technical colleges are also entitled to be treated on par with the university teachers. The only objection on the part of the respondent-college was that the said instructions issued by the Government of India and the State Government have no statutory force and they are

not binding on it. But, it is not denied that all other colleges have adopted 60 years as the age of superannuation even in their service conditions; whereas, no service conditions are framed insofar as respondent-college is concerned. In view of the above, the petitioner was entitled for being continued in service upto 30-6-2000 and, therefore, the impugned Proceedings dated 8-8-1998 is set aside as arbitrary and illegal. Consequently, the petitioner is entitled for all benefits, such as, salary, gratuity etc., as per his eligibility treating that he retired on 30-6-2000 on attaining the age of superannuation.

The Writ Petition is accordingly allowed. There shall be no order as to costs.

19-11-2004

prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Friday, Nineteenth day of November Two thousand and Four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Commissioner of Technical Education,
Government of A.P., BRKR Buildings,
Tankbund Road, Hyderabad-500 063.
2 The Chairman,
SVH College of Engineering, Machilipatnam-521 002
3 The Chairman,
All India Council for Technical Education, New Delhi.

4. 2CCs to G.P. for Higher Education, High Court Buildings, Hyderabad (OUT)

5. 2CD copies.